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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 79

LEHIGH VALLEY COOPERATIVE FARMERS, INC., et al.,

Petitioners

v.

UNITED STATES OF AMERICA, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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OPPOSITION TO MOTION OF DAIRYMEN'S LEAGUE COOPERATIVE ASSOCIATION, et al., TO FILE BRIEF AMICI CURIAE

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Pursuant to Rule 42(3) Lehigh Valley Cooperative Farmers, Inc., et al., Petitioners, by their attorneys object to the Motion to file Brief Amici Curiae for the following reasons:

1. The Brief of the Applicants was offered for filing prior to Order of Court and without written consent of all parties, in flagrant disregard of Rule 42(2).

2. The filing of Applicants' Brief is tardy in that it has not and cannot now be presented with the copy of the required Order of Court within the time allowed for the filing of the Brief of the party supported, November 13, 1961.

3. The filing of Applicants' Motion was tardy in that it is implicit in Rule 42(3) that such a Motion be filed in time to permit the Court to act on the Motion and Opposition thereto within the time allowed for the filing of the Brief of the party supported.

4. The filing of Applicants' Motion was tardy in that no reason is suggested for the inordinate delay in said filing even though counsel for Petitioners refused consent early in September 1961, which refusal was confirmed in writing by letter of September 8, 1961, which delay is in violation of the timely requirement of Rule 42(3).

5. The time for filing Respondents' Brief was originally October 5, 1961. At the request of the Solicitor General, counsel for Petitioners agreed to extensions to November 6, 1961, and then to November 13, 1961. The Briefs of Respondents and the States of New York, New Jersey, Connecticut and Vermont were filed prior to November 13, 1961. Petitioners have addressed themselves to preparing a Reply Brief to those filed on or before the above date. Petitioners claim for relief was instituted August 1, 1957, and since that time they have been required to pay substantial sums of money into the registry of the Court monthly. The Petitioners have not asked for delay during the various stages of this litigation, which has extended over a period of more than four years. The status of the Applicants' Brief is uncertain, and Petitioners had no knowledge until November 14, 1961, that the Applicants were actually going to ask for permission to file a Brief Amici Curiae. The lateness that would be occasioned by the granting of this Motion is prejudicial to Petitioners. The Petitioners have never asked for an extension of time during the steps of this litigation, and have only reluctantly agreed to extensions asked for

by the Respondents, because of the heavy financial burden imposed. Petitioners oppose any further extension of time to any interested parties.

6. The Motion fails to "concisely state the nature of the Applicants' interest" with respect to nine (9) of the fourteen (14) Applicants, in that their interest is shown only vaguely, by the meaningless statement that "the vast majority are under Federal Milk Marketing Orders containing compensatory payment provisions comparable to those in issue". (Motion p. 4m)

7. Applicants' Motion fails to allege relevant facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the United States Solicitor General, and the Briefs of the States of New York, New Jersey, Connecticut and Vermont heretofore filed.

8. Applicants' Motion alleges numerous factual matters concerning their memberships, their locations, and their relationships to other marketing orders which Petitioners have no opportunity to verify because of the time element involved in the peculiar filing of Applicants' Motion.

Conclusion

For the foregoing reasons the Motion of Dairymen's League Cooperative Association, Inc., et al., for leave to file Brief Amici Curiae should be denied.

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November 20, 1961